WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.No.29 of 2002

The Commissioner of Income-tax,
Tamil Nadu-I, Chennai .. Appellant

vs.

Smt.V.Prema .. Respondent

Reference, at the instance of the Revenue, under section 256 (1) of the Income-tax Act, 1961, arising out of the order of the Income Tax Appellate Tribunal, C-Bench, Madras in ITA No.560/MDS/1991 dated 10.5.2000, for the assessment year 1988-89. against the I.T.A. No. 167/89-90 dated 6.1.1991 on the file of the Commissioner of Income Tax (Appeals) V Madras, as against the G.I No.PA.No.709-88-89/47-064-PO-1337 dated 8.2.1990 on the file of the Income Tax Officer, Company Ward I (5) Madras.

For applicant : Mr.J.Narayanasamy
Jr.Standing Counsel (I.T.)
For respondent : Mr.R.Vijayaraghavan

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

At the instance of the Revenue, the Income-tax Appellate Tribunal has stated a case and referred the following question of law under section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for our consideration:

> "Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is right in law in deleting the addition made under section 69 of the Income-tax Act as unexplained investment?

2. The brief facts of the case are as under:
2.1. The assessment year with which we are concerned is 1988-

https://hcservices.ecourts.gov.in/hcservices/

89. The assessee, an individual, filed her return of income admitting a net income of Rs.92,872/-. For the same assessment year in the wealth-tax return filed the assessee admitted 3659 grams of gold jewellery. However, during the course of search in the residence of assessee and her husband on 14.12.1987, 953 grams of gold jewellery belonging to the assessee were found.

2.2. In respect of missing jewellery to the tune of 2706 grams, the assessee explained that she handed over the same to her husband about three years back. Her husband also by letter dated 21.2.1988 confirmed the same stating that the jewellery of 2706 grams belonging to his wife had been sold to meet his financial commitments. The assessing officer, therefore, worked out the capital gains at Rs.3,36, 094/- on the basis of the market value prevailing during the previous year relevant to the assessment year.

2.3. The assessing officer also treated the difference of jewellery of 2706 grams as having been purchased by the assessee after 14.12.1987, date of search and before 31.3.1988. In the absence of any explanation offered by the assessee, the value of 2706 grams of jewellery was treated as unexplained investment of the assessee.

2.4. On appeal, the Commissioner of Income-tax (Appeals) confirmed the order of the assessing officer.

2.5. On further appeal, the Appellate Tribunal, while holding that the Revenue was justified in treating the jewellery of 2706 grams as having been sold and bringing the capital gains to tax, accepted the case of assessee that the jewellery could have been sold at the price adopted and directed the assessing officer to redo the same after giving reduction of 25% for distress sales, wastages, etc.

2.6. As regards unexplained investment to the tune of Rs.9,49,806/-, the Tribunal accepted the case of assessee that the jewellery was given by her to her husband. The Tribunal further held that even though the said jewellery was treated to be sold, there was no material to show that the assessee again purchased the same quantum of jewellery, and accordingly, deleted the addition towards undisclosed income.

2.7. Aggrieved by the same, the Revenue sought for a reference. The Accountant Member of the Tribunal rejected the reference application, whereas the Judicial Member was of the opinion that the application of provisions of sections 69 and 69A being involved besides its interpretation, the question of law arose out of the order of Tribunal.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

2.8. Since there was difference of opinion, the matter was referred to a third member who agreed with the view expressed by the Judicial Member. Accordingly, the Tribunal has stated case and referred the question of law referred to above.

3. The only point to be decided is whether the Tribunal was right in deleting the addition made under section 69 of the Act. The Tribunal found that the said jewellery was given by the assessee to her husband according to whom the same was pledged and even if the department was to treat the jewellery as being sold, there was no material to show that the assessee again purchased the same quantum of jewellery.

4. When the Revenue sought for a reference, the Judicial member was of the view that there arose a question of law, which was agreed by the third member, and for better appreciation of the point, it is apposite to extract the relevant portion of the order of Third Member of the Tribunal, which reads as follows:

> "Section 69A starts with, 'where in any financial year the assessee is found to be the owner of any money, bullion, jewellery, etc.'. In the instant case as the facts have been brought out earlier, the assessee had claimed that the jewellery to the tune of 2706 gms. Was given by her to her husband and the husband admitted as having received it and disposed it of in settlement of his financial commitments. No doubt, proof in that regard was not furnished. The assessee's husband's letter dt. 21.2.1988 states as having pledged the jewellery, for which again there was no evidence available. Therefore the action of the Revenue on levying capital gains treating 2706 gms. Of jewellery as sold was upheld by the Tribunal. Consequent to treating 2706 gms. As sold and the assessee showing at 3569 gms. As on 31.3.1988, the assessing officer had proceeded to apply sections 69 and 69A as an admission on the part of the assessee as owning jewellery to the extend of 3569 gms. Requiring her to explain to the tune fo 2706 gms. The words 'found to be owner' may require interpretation. I am therefore of the view that the question as raised by the Revenue would be a mixed question of facts and law. I would therefore agree with the view expressed by the J.M. that a question of law as raised by the Department does arise and deserves to be referred for the valued opinion of the Hon'ble High Court of Madras."

5. Concededly, in the wealth tax return for the assessment year 1987-88 the assessee admitted gold jewellery to the extent of

https://hcservices.ecourts.gov.in/hcservices/

3569 grams and on 14.12.1987 during the search in the residence of the assessee, gold jewellery to the extent of 953 grams was found. When asked, the assessee explained that she had handed over the remaining jewellery to her husband. The husband also confirmed the same. Though the case of the assessee is that the jewellery of 2706 grams were pledged by her husband to meet his commitments, the jewellery was found to be sold by her husband and accordingly, the difference of jewellery, viz., the difference between the wealth-tax return for the assessment year 1987-88 and the jewellery on hand on the date of search, was treated as having been purchased by the assessee after 14.12.1987 and before 31.3.1988. Accordingly, the assessing officer added the value of the unexplained investment.

6. However, the Tribunal found that no material was provided to show that even though the assessee mechanically returned the jewellery in her wealth-tax return, such excess jewellery was found in her possession to the extent declared and the addition was based on the presumption of the department and deleted the addition.

7. Though the Judicial Member referred to section 69A of the Act, the question revolves on section 69 of the Act and hence, before going further, it is apt to refer section 69 of the Act:

> "69.Unexplained Investments:
>
> Wherein in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

8. A reading of the above section goes to show that the assessing officer may treat the value of investment as income only when the explanation offered by the assessee is not satisfactory. The Tribunal has rendered a finding that there was no material for the assessing authority to conclude that the exact quantity of missing jewellery had been acquired at a subsequent date. As observed by the Gujarat High Court in Ushakant N.Pate v. C.I.T (282 ITR 553), the Revenue must establish that there was investment not recorded in books of account and that such investment was made in the relevant financial year. The Gujarat High Court also held that in the first instance it is incumbent upon the authority to establish that there were investments made by the assessee. In the instant case, the Tribunal has rendered a finding of fact that there was no material to show that the assessee again purchased the same quantum of jewellery and that there was no material to

https://hcservices.ecourts.gov.in/hcservices/

show that even though the assessee mechanically returned the jewellery in her wealth-tax return, such excess jewellery was found in her possession to the extent declared and the addition was based on the presumption of the department. Further, in the order in W.T.A.No.326/Mds/91 dated 14.12.2004 which arose out of wealth-tax assessment of the assessee for the assessment year 1988-89, the Tribunal rendered a finding that there was no material to show that the assessee again purchased the same quantum of jewellery and as no appeal had been preferred against the said order dated 14.12.2004, the same had become final.

9. We are therefore of the view that when the Tribunal has rendered a finding of fact that there is no material to show that the assessee had again purchased the jewellery, it is not open to the Court to disturb the same as, when the Tribunal based its findings on facts, no question of law much less a substantial question of law arises for consideration (vide: C.I.T. v. P.V.Bhoopathy (283 ITR 0365).

We therefore hold that the Tribunal was correct in deleting the addition made under section 69 of the Income-tax Act as unexplained investment. Accordingly, we answer the question of law in the affirmative and against the Revenue. No costs.

na.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
Income Tax Appellate Tribunal
C' Bench, Madras, Rajaji Bhavan,
III floor, Besant Nagar, Chennai-90

2. The Commissioner of Income tax
Appeals V, Madras

3. The Commissioner Income Tax Officer,
Madras.

4. The Income Tax Officer,
Company Ward I (S) Madras.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

+ 1 cc to the M/s. Pushya Sitaraman, Senior Standing Counsel (Income Tax) SR no. 5619

+ 1 cc to the Mr. R. Vijaya Raghavan, Advocate SR No. 5592

MS(CO)
SR/27.2.2007

T.C.No.29 of 2002

https://hcservices.ecourts.gov.in/hcservices/